

# **EXHIBIT 6**

H6EHLUMS

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
-----x

3 UNITED STATES OF AMERICA,

4 v.

16 Cr. 483 (JSR)

5 STEFAN LUMIERE,

6 Sentence

7 Defendant.

8 -----x

9 New York, N.Y.

10 June 14, 2017

9:40 a.m.

11 Before:

12 HON. JED S. RAKOFF,

13 District Judge

14 APPEARANCES

15 JOON H. KIM

16 Acting United States Attorney for the  
Southern District of New York

17 IAN MCGINLEY

DAMIAN WILLIAMS

18 Assistant United States Attorney

19 JONATHAN HALPERN

JONATHAN FRIEDMAN

20 Attorneys for Defendant

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(Case called)

THE COURT: Good morning. All right. So the parties have stipulated to a gain amount. This is a stipulation "for sentencing purposes only," whatever that may mean. That a reasonable estimate of the gains resulting from the fraud is between 1.5 million and 3.1 million. I've reviewed that calculation and the basis for it. I find that it is a reasonable calculation. The government also still asserts the possibility of a loss, a larger loss calculation. I've reviewed that calculation, and I don't find it sufficiently adequately supported to adopt. So I will adopt the gain calculation, which means that to the base offense level of seven, there is added an enhancement of 16 points. The parties still disagree as to the other enhancements, the two-point enhancement for ten or more victims and the four-point enhancement for associations with an investment adviser.

I'm persuaded by the government's arguments, and so I will add those two enhancements for a total offense level of 29, for a guideline range of 87 to 108 months in prison. However, if I did not add those enhancements and adopted the defense position, the total offense level would be 23, and the guideline range would be 46 to 57 months. Excuse me. Sit down, counsel. And my sentence, which is going to be below either of the guideline ranges, would be exactly the same whether those enhancements were added or not. They are totally

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1 THE COURT: Well, the main issue in white-collar cases  
2 is often general deterrence, and there is a body of literature  
3 largely ignored by the sentencing commission but which suggests  
4 that, on the one hand, heavy sentences do not serve added  
5 deterrent effect in white-collar cases, but that, on the other  
6 hand, some meaningful prison time does serve a major deterring  
7 effect in white-collar cases because it sends the message to  
8 others similarly situated that you can't buy your way out of  
9 this.

10 MR. HALPERN: I understand that's a factor.  
11 Certainly, that's to be considered, along with the seriousness  
12 of the offense and other objectives. Under these really  
13 extraordinary circumstances for Mr. Lumiere personally,  
14 individually, those other factors that make some reference to  
15 that, when your Honor considers that, whatever punishment your  
16 Honor imposes is going to be disproportionately harsh because  
17 of the circumstances Mr. Lumiere finds himself in as outlined  
18 in the PSR, including paragraphs 119 and 120.

19 THE COURT: Based on my own assessment of some of the  
20 materials you presented in that regard, I think one could  
21 quibble here or there. I essentially accept the basic picture  
22 that's been portrayed there. So I don't think we need to get  
23 into that in great detail, unless you want to. So I understand  
24 the argument that you're making there.

25 MR. HALPERN: I would just say he is, because of those

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1 will be suspended based on the Court's determination that he  
2 poses a low risk of future substance abuse.

3 There will also be imposed the standard conditions of  
4 supervision 1 through 13. They appear on the face of the  
5 judgment and will be gone over with the defendant by the  
6 probation officer when he reports to begin his period of  
7 supervised release, which he must do within 72 hours of his  
8 release from prison, and he will be supervised by the district  
9 of his residence. There are other special conditions  
10 recommended by the probation office, but I don't think they're  
11 necessary. Finally, there's a special assessment of \$300 which  
12 is mandatory and must be paid.

13 Now, before I advise the defendant of his right of  
14 appeal, anything else that counsel wants to raise for the  
15 Court? First, anything from the government?

16 MR. MCGINLEY: No, your Honor.

17 THE COURT: Anything from the defense?

18 MR. HALPERN: I'm sorry, your Honor, respectfully, if  
19 I just may be heard with respect to restitution, and I  
20 apologize to your Honor if I misheard. I had thought your  
21 Honor was saying earlier in response to my inquiry there was  
22 going to be zero restitution. It's also, I would respectfully  
23 submit, not applicable here because of gain and not actual loss  
24 and identifiable victims. So --

25 THE COURT: No, that's not a frivolous position.

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1 What's the government's position?

2 MR. MCGINLEY: Your Honor, I think, just to be safe,  
3 the government would forgo the restitution.

4 THE COURT: So no --

5 MR. MCGINLEY: If I just --

6 THE COURT: Not impose the restitution.

7 MR. MCGINLEY: And if I just may, just for the record,  
8 because sometimes these proceedings wind up in other  
9 proceedings, the government does not concede that there was no  
10 actual loss to these victims, but it has not been finally  
11 determined.

12 THE COURT: The government's position, as was very  
13 eloquently put forth in its many submissions, was that there  
14 was huge loss, but I have not been persuaded that the  
15 methodology is sufficiently accurate to permit that  
16 calculation, but the government fully maintains its rights.  
17 And with respect to forfeiture, I understand the government, if  
18 not in this case but certainly in some cases, is going to try  
19 to narrow *Honeycutt*, and all your rights are preserved. So  
20 we'll just leave it with the fine so far as the financial  
21 aspects of this sentence are concerned.

22 Anything else?

23 MR. HALPERN: Yes, your Honor, if I may, two things --  
24 three things. First thing, if I may, in terms of reporting  
25 recommendation, if I could request your Honor, understanding